

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	Case. No. 0905012675
	)	
LATORIA WEBB,	)	
	)	
Defendant.	)	
	)	

**Submitted: February 8, 2010**  
**Decided: April 15, 2010**

***MEMORANDUM OPINION***

Michelle E. Whalen, Esquire  
Deputy Attorney General  
820 N. French Street  
Wilmington, DE 19801  
*Attorney for the State*

T. Andrew Rosen, Esquire  
Assistant Public Defender  
900 N. King Street  
Wilmington, DE 19801  
*Attorney for the Defendant*

**ON DEFENDANT'S MOTION TO COMPEL THE STATE**  
**TO PRODUCE USE OF FORCE REPORTS**

Pursuant to *Court of Common Pleas Criminal Rule 16*, defendant requested discovery from the State on October 7, 2009 by email. The State and the Public Defender's Office have agreed to this procedure to facilitate the large volume of cases which each office must address. A first motion to compel discovery was filed by defendant on October 27, 2009. For some unexplained reason, that motion was not heard. A second motion to compel was filed on November 6, 2009, and the Court heard this motion on January 15, 2010. In this motion, defendant demanded

the State produce any reports prepared by the officers regarding the use of force. Following the hearing, the Court reserved decision and ordered written arguments.

### **Facts and Procedural History**

Defendant Latoria Webb (hereinafter “Defendant”) was arrested May 15, 2009, on two charges of Resisting Arrest and two charges of Disorderly Conduct. Defendant pled not guilty on August 18, 2009 and demanded a jury trial, which was originally scheduled for October 28, 2009.

In both motions referred to above, Defendant requested police reports, any exculpatory material pursuant to *Brady v. Maryland*, and any other *Rule 16* reports prepared as a result of the alleged incident. The Court continued the trial to June 16, 2010 to consider the parties’ written submissions.

### **Analysis**

A defendant’s right to discovery in a criminal case is governed by *Court of Common Pleas Criminal Rule 16*. Therefore, unless defendant can point to a provision in the rule or other case law, her request for any material must fail.

The language of *Criminal Rule 16* is very specific regarding matters which are discoverable pre-trial and it does not permit discovery of police reports. Therefore, since police reports are not discoverable under the rule and a use of force report is by its nature a police report, it is not discoverable. In *State v. Burris*,<sup>1</sup> this Court wrote that “[a] Use of Force Report is ... an internal police report required, by the police

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<sup>1</sup> 2006 WL 2129974 (Del.Com.Pl.).

agency, to be filed by its officers whenever certain levels of force are used in carrying out their duties.”<sup>2</sup>

Defendant argues she is entitled to the Use of Force Reports under the U.S. Supreme Court’s holding in *Jencks v. United States*, 353 U.S. 657, 77 S. Ct. 1007 (1957). There, the Court held that a defendant is entitled to all reports of government witnesses touching on the events and activities to which they testified at trial, to determine if they may aid the defendant’s defense. The general rule is that Jencks material is discoverable after the witness has testified. However, defendant argues that because trials are normally only a matter of hours in the Court of Common Pleas, the Court should order their production prior to trial to avoid unnecessary delay or potential scheduling problem.

In *Hooks v. State*,<sup>3</sup> Delaware courts formerly adopted the rule announced in *Jencks v. United States*,<sup>4</sup> with respect to production of a witness’ prior-written statement. Defendant argues that the *Jencks* rule, as adopted, does not limit the production of witness statements to the actual trial. Additionally, Defendant argues that the Delaware Supreme Court decision in *Snowden v. State*<sup>5</sup> requiring a defendant to make a “threshold showing” of materiality “to compel production of personnel files” is inapplicable in this case.<sup>6</sup> The State refers to *Court of Common Pleas Criminal*

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<sup>2</sup> Id. at \*1.

<sup>3</sup> Del.Supr., 416 A.2d 189, 200 (1980).

<sup>4</sup> 353 U.S. 657 (1957).

<sup>5</sup> 672 A.2d 1017 (Del. 1996).

<sup>6</sup> Id.

Rule 16, as well as case law,<sup>7</sup> in support of its position that no requirement exists which requires the production of such material pre-trial.

I find no basis to conclude that defendant is entitled to the police reports except pursuant to the *Jencks* rule. Further, there is no compelling reason to go outside the *Jencks* requirement that the report be produced only after the witness testified.<sup>8</sup> Specifically, *Jencks* requires the State to turn statements over to the defense at time of cross-examination which related to the subject matter of a witness' direct examination.<sup>9</sup>

In this case, Defendant seeks a copy of the Use of Force Report as part of pre-trial discovery and prior to the police officer's testimony on direct. Such a request is clearly impermissible under *Jencks*. Further, *Court of Common Pleas Criminal Rule 26.2* specifically provides that a witness' statement is to be produced on motion after the witness has testified on direct examination.<sup>10</sup> This is consistent with *Court of Common Pleas Criminal Rule 16* that statements by State witnesses or prospective State witnesses are expressly not subject to discovery.<sup>11</sup>

THEREFORE, the defendant's motion for the use of force report at this stage of the proceeding is *DENIED*.

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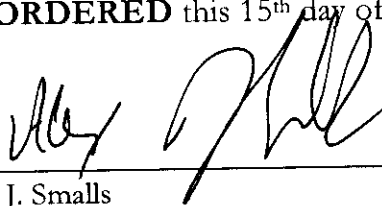
<sup>7</sup> Notwithstanding the language of *Court of Common Pleas Rule 16*, the State argues that the Use of Force Reports are "personnel files" and require a showing that the files or documents contain evidence that is either exculpatory in nature or contain evidence necessary in mounting a defense pursuant to *Snowden*. The State also argues that ruling in *State v. Anderson*, 1999 WL 789282 (Del.Super.) extends the holding in *Snowden*, to include personnel records and other internal files, making Defendant's argument moot.

<sup>9</sup> See *State v. Thompson*, 2001 WL 660181 at \*1 (Del.Super.) (Internal citations omitted); See also *Rose v. State*, 542 A.2d 1196 at 1199 (Del. 1988) (citing *Palermo v. United States*, 360 U.S. 343, 345 (1959)).

<sup>10</sup> Ct.Com.P.Crim.R. 26.2.

<sup>11</sup> Ct.Com.P.Crim.R. 16(a)(2).

**SO ORDERED** this 15<sup>th</sup> day of April, 2010

A handwritten signature in black ink, appearing to read 'Alex J. Smalls', written over a horizontal line.

Alex J. Smalls  
Chief Judge

Webb-ORD Apr 2010